

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

UPC HAWAII HOLDINGS, LLC, and )  
KAHEAWA WIND POWER II, LLC, )  
Complainants, )  
vs. )  
MAUI ELECTRIC COMPANY, LIMITED, and )  
HAWAIIAN ELECTRIC COMPANY, INC., )  
Respondents. )

DOCKET NO. 2008-0021

ORDER NO. 24069

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

Filed March 4, 2008  
At 12:30 o'clock P. M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii

Karen Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

UPC HAWAII HOLDINGS, LLC, and	)	Docket No. 2008-0021
KAHEAWA WIND POWER II, LLC,	)	
	)	Order No. 24069
Complainants,	)	
	)	
vs.	)	
	)	
MAUI ELECTRIC COMPANY, LIMITED, and	)	
HAWAIIAN ELECTRIC COMPANY, INC.,	)	
	)	
Respondents.	)	
_____	)	

ORDER

By this Order, the commission grants the Motion to Intervene filed by SHELL WINDENERGY INC. ("Shell") on February 25, 2008 ("Motion"). The commission also directs the parties<sup>1</sup> to include Shell in their efforts to develop a stipulated procedural schedule for this docket, pursuant to Order No. 24034, filed on February 11, 2008.

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<sup>1</sup>The parties to this docket are UPC HAWAII HOLDINGS, LLC ("UPC Hawaii"), KAHEAWA WIND POWER II, LLC ("Kaheawa Wind") (jointly, "Complainants"), MAUI ELECTRIC COMPANY, LIMITED ("MECO"), HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") (jointly, "Respondents"), and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"), an ex officio party, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62. Complainants, Respondents, the Consumer Advocate, and Shell will collectively be referred to herein as the "Parties."

I.

Background

On February 6, 2008, Complainants filed a Verified Complaint and Petition ("Complaint") with the commission against Respondents, alleging, in sum, that:

MECO and HECO have jointly or in combination acted (1) in violation of the Commission's rules implementing the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") and against public policy encouraging the development of Hawaii's and the Nation's renewable energy resources and to the detriment of the ratepayers and electric energy consumers on the Island of Maui by refusing to execute an agreement for the purchase of energy from UPC Hawaii's proposed second power project on the Island of Maui currently being developed by Kaheawa Wind, (2) in violation of HAR Section 6-74-15(c) by failing to petition this Commission for a hearing although substantially more than 75 days has elapsed since Kaheawa Wind tendered an offer to sell electric energy from its Project to MECO and the parties have not reached agreement on the terms of such sale and purchase, and (3) in violation of PURPA, the Commission's rules and Hawaii law by devising and unilaterally imposing a "mini-competitive bidding" process on UPC Hawaii and concluding that HECO and MECO would no longer negotiate with UPC Hawaii or Kaheawa Wind for a power purchase agreement for the Project.<sup>2</sup>

The Complaint further alleges that Respondents decided not to continue negotiating with Complainants for a wind power project on Maui, and instead, decided to negotiate only with Shell for such a project:

As of the date of this Complaint and Petition, UPC Hawaii, on the one side, and HECO and MECO, on the other side, have been unable to conclude a power purchase agreement for the Project because HECO and MECO have

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<sup>2</sup>Complaint at 1-2.

simply refused to enter into such negotiations with UPC Hawaii and now apparently have determined that they will not continue any such negotiations with UPC Hawaii because MECO has chosen to negotiate only with Shell Wind.<sup>3</sup>

Complainants filed the Complaint as a formal complaint under HAR § 6-61-67. As set forth above, the Complaint also alleges that Respondents violated HAR § 6-74-15(c). Pursuant to HAR § 6-74-15(f), the commission is required to decide a petition filed under HAR § 6-74-15(c) "within 120 days of the filing of the petition; provided that the commission, for good cause, may modify the time limit."

By Order No. 24034, filed on February 11, 2008, the commission ordered Respondents to file an answer to the Complaint, within twenty days after the date of service of the Order. The commission also instructed the Parties to file a stipulated procedural schedule for the commission's review and approval, within thirty days from the date of the Order, which (absent a waiver by the Parties) allows the commission to issue a decision and order in this docket within 120 days of the filing of the Complaint, pursuant to HAR § 6-74-15(f). Alternatively, in the absence of a formal procedural schedule, the commission directed each party to submit a proposed procedural schedule for the commission's consideration by the same date.

On February 25, 2008, Shell filed its Motion to Intervene in this proceeding. No oppositions were filed in response to the Motion.

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<sup>3</sup>Id. at 16.

## II.

### Shell's Motion

HAR § 6-61-55 sets forth the requirements for intervention in commission proceedings. It states, in relevant part:

- (a) A person may make an application to intervene and become a party by filing a timely written motion in accordance with sections 6-61-15 to 6-61-24, section 6-61-41, and section 6-61-57, stating the facts and reasons for the proposed intervention and the position and interest of the applicant.
- (b) The motion shall make reference to:
  - (1) The nature of the applicant's statutory or other right to participate in the hearing;
  - (2) The nature and extent of the applicant's property, financial, and other interest in the pending matter;
  - (3) The effect of the pending order as to the applicant's interest;
  - (4) The other means available whereby the applicant's interest may be protected;
  - (5) The extent to which the applicant's interest will not be represented by existing parties;
  - (6) The extent to which the applicant's participation can assist in the development of a sound record;
  - (7) The extent to which the applicant's participation will broaden the issues or delay the proceeding;
  - (8) The extent to which the applicant's interest in the proceeding differs from that of the general public; and

- (9) Whether the applicant's position is in support of or in opposition to the relief sought.

HAR § 6-61-55(a) and (b). HAR § 6-61-55(d) further states that "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented."<sup>4</sup>

Shell asserts that its "property and financial interests in this matter are obvious and substantial."<sup>5</sup> In pursuing its "Auwahi Wind Project" with Respondents, Shell alleges that it has, among other things: (1) entered into a 25-year ground lease for the use of approximately 5,252.87 acres of land on Maui for the Auwahi Wind Project; (2) expended a significant amount of development expenses since June of 2006 for retaining and utilizing numerous consultants for the project; (3) conducted wind resource analysis beginning in October 2006; and (4) substantially completed the environmental and technical due diligence portion of the Auwahi Wind Project, such that Shell "now stands ready to proceed with the entitlement process."<sup>6</sup>

Moreover, Shell, as the "winning party" of the alleged "mini-competitive bidding" process with Respondents, argues that Complainants' requested relief could have a substantially adverse impact to Shell's significant property, financial, and public interest in this matter. Shell contends:

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<sup>4</sup>See In re Application of Hawaiian Elec. Co., Inc., 56 Haw. 260, 262, 535 P.2d 1102, 1104 (1975) (intervention "is not a matter of right but a matter resting within the sound discretion of the commission").

<sup>5</sup>Motion at 6.

<sup>6</sup>Id.

Insofar as Shell stands in the shoes of the notional "winning party" that has emerged from the alleged "mini-competitive bidding" process that Complainants now seek to invalidate, Shell has a significant concern with Complainants' desire to obtain an Order from this Commission seeking to invalidate all of Respondents' actions to date vis-à-vis this process - and possibly the fruits that have been borne from said process: i.e., the Auwahi Wind Project.<sup>7</sup>

Upon review, the commission finds that Shell, with whom Respondents allegedly selected to negotiate a wind project contract over Complainants, has a significant interest in the matters of this docket. As maintained by Shell, any grant of relief by the commission to Complainants, as requested in the Complaint, will adversely affect Shell's claimed property and financial interests in its Auwahi Wind Project. Thus, the commission concludes that affording intervenor status to Shell is proper to allow Shell to protect its interests in this proceeding. Moreover, Shell's involvement in this proceeding will be helpful to the commission in creating a complete and sound record. For all of these reasons, the commission grants Shell's Motion.

Given the commission's decision herein, the commission instructs the Parties, including Shell, to collaborate in developing a stipulated procedural schedule for this docket, pursuant to Order No. 24034, filed on February 11, 2008. As stated in Order No. 24034, the stipulated procedural schedule, absent a waiver by the Parties, shall allow the commission to issue a decision and order in this docket within 120 days of the

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<sup>7</sup>Id. at 8.

filing of the Complaint, pursuant to HAR § 6-74-15(f). Alternatively, in the absence of a formal procedural schedule, each party shall submit a proposed procedural schedule for the commission's consideration. The stipulated procedural schedule, or proposed procedural schedules, shall be filed within thirty days of the date of Order No. 24034.

### III.

#### Orders

##### THE COMMISSION ORDERS:


1. Shell's Motion to Intervene is granted.
2. The Parties, including Shell, shall work together to develop a stipulated procedural schedule for this docket, which allows the commission to issue a decision and order in this docket within 120 days of the filing of the Complaint. Alternatively, in the absence of a formal procedural schedule, each party shall submit a proposed procedural schedule for the commission's consideration. The stipulated procedural schedule, or proposed procedural schedules, shall be filed within thirty days of the date of Order No. 24034.




DONE at Honolulu, Hawaii

MAR - 4 2008


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Kaiulani Kidani Shinsato  
Commission Counsel

2008-0021.laa

CERTIFICATE OF SERVICE

I hereby certify that I have on this date served a copy of the foregoing Order No. 24069 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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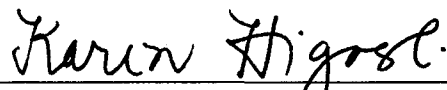
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Certificate of Service  
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DATED: MAR - 4 2008